IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

**FRIDAY, THE TWENTY SECOND DAY OF DECEMBER
TWO THOUSAND AND SIX**

PRESENT
THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION No.16387 of 1997

Between:

Jagga Narasimhulu.

..... PETITIONER

AND

1.The Joint Collector, Ananthapur and others.

.....RESPONDENTS

The Hon'ble Sri Justice Nooty Ramamohana Rao

Writ Petition No.16387 of 1997

Order:

This Writ Petition has been instituted calling in question the validity of the orders passed by the first respondent-Joint Collector & Additional District Magistrate, Ananthapur District, on 16-06-1997, cancelling the patta of assignment made in favour of

one Jagga Babaiah, grand father of the writ petitioner, on 30th April, 1951, in respect of an extent of Ac.0.20 cents of land situated in Survey No.201-5 of Penukonda town in Anantapur District.

It is not in dispute that one Sri Jagga Babaiah, Son of Jagga Lakshmaiah, with a view to establish a Petrol and Kerosene storage facility, has obtained agency from the Burmashell Company and then approached the Revenue Administration soliciting assignment of land in his favour. Considering the significance of the public purpose that would be served by such a facility, the District Revenue Administration has taken a decision on 27th July, 1950 to assign the land admeasuring Ac.0.20 cents situated in Survey No.201-5 of Penukonda Village subject to the payment of market value of Rs.300/- for the land and the tree value of sunkesari tree and ground rent at Rs.0-2-0 (2 anas) per cent. On realizing the said value, a formal patta has been granted in favour of

Jagga Babaiah through the proceedings dated 30-04-1951 of the then Tahsildar, Penukonda. But however, during November, 1990, the third respondent-Mandal Revenue Officer, Penukonda, seems to have filed a report that the land in question was no longer been

put to use for storage of Kerosene or Petrol and that the conditions of the grant have been violated and, therefore, the grant itself deserves to be set aside and the land in question needs to be resumed by the Government. The said report was also endorsed by the second respondent-Revenue Divisional officer in January, 1991. Based upon these adverse reports, the first respondent-Joint Collector has initiated action in the matter and passed the impugned order on 16-06-1997 duly cancelling the patta granted in favour of late Jagga Babaiah.

It is baffling to note as to why a grant, which has been made as on 30-04-1951, should be attempted to be cancelled after four decades on the ground that it is presently not being put to the same use for which the original grant came to be made. It is equally baffling to note as to how an attempt could be made to retrieve the possession of this 0.20 cents of land from the legal heirs of the original grantee *viz*., Jagga Babaiah even after realizing the entire land value including that of the value of the trees standing on the land in question. So far as the cancellation of assignment of lands on realizing its market value is concerned, the said issue has been considered by a Division Bench of this Court in a judgment reported in

Nimmagadda Rama Devi vs. The District Collector, Krishna at Chilakalapudi, Machilipatnam & Anr.[1] In the said judgment, the provisions of the A.P. Assigned Lands (Prohibition of Transfer) Act, 1977 (Act IX of 1977) have been analyzed and it was held that the lands, which have been assigned subject to the condition of payment of market value, are not liable to be cancelled at a later point of time by invoking the provisions of Act IX of 1977. It will be useful to extract what the Division Bench has pointed out in Para 7 of its judgment:

> "By reading the above provisions, it is apparently clear that the scheme of the Act is to prohibit alienation of assigned lands except those on payment of market value because the whole idea of the Act is to make free gift of the lands to the landless poor persons whereas the lands were originally assigned to the assignees as per G.O.Ms.NO.1142 dated 1.6.1954 on payment of market value under unavoidable circumstances. Further the definition of 'assigned land' makes it clear that lands assigned to the landless poor persons under the rules for the time being in force, subject to the condition of non-alienation and includes lands allotted or transferred to landless poor persons under the relevant law for the time being in force relating to land ceilings, and the word 'assigned' shall be construed accordingly. From the above, it has to be construed that if there is a condition of

non-alienation while assigning the lands or the land is assigned under the provisions of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973, then only it is deemed as assigned and under Act No.IX of 1977. In the case on hand, here is no condition barring alienation of lands. On the other hand the note appended to Condition No.1 of 'D' form patta specifically says that " this condition will not apply to cases of assignment made on collection of market value under part 1(8) of G.O.Ms.No.1142 of 18-6-1954". By that condition, it is evident that there is no bar for alienation of lands. Therefore, it cannot be said that the lands are assigned lands. When the lands are not assigned lands, the Art No.IX of 1977 has no applicability to the assignments made to the assignees. In RAVURI TULISAMMA V. MANDAL REVENUE OFFICER[2] a learned single Judge of this Court held that cancellation of assignment of land and grant of "D" form patta on receiving consideration, on the ground of alienation, is illegal.'

It is therefore, crystal clear that the grant made in favour of Sri Jagga Babaiah on 30th April, 1951 upon payment of market value is not liable to be cancelled subsequently treating the same as a simple and pure grant of the State by way of an assignment. By realization of the market value, obviously, the nature of the title to the said land changes and it

loses the status of a grant inasmuch as the whole title passes on to the person from whom the market value has been realized. There is essentially change of title over the piece of land, which was the subject matter of grant to begin with. Thus, the title to the land in question had been passed on completely in favour of deceased Jagga Babaiah as the market value of the land in question has been realized from him.

Even otherwise, it is not in dispute that the land in question has been put to use initially for the purpose of storage of Petroleum and Kerosene. It is quite possible that the said business, as asserted by the writ petitioner, may be carrying on still or it may not have been carried on at all. That is a disputed question of fact. The Revenue Administration should have taken care to verify as to whether the license in favour of the present writ petitioner for storing and carrying on the sale of Kerosene, Petroleum or Petroleum products is subsisting or not. No such attempt has been made. Therefore, the conclusion drawn by the Revenue Administration, that the land in question was not being put to use as is conceived by the original grant, only on the ground that the shed erected thereon is found to be locked at all times and

that there were no traces of any storage operations being carried on there, is misconceived. I am afraid that such aspects of the matter cannot form a fair or a reasonable basis to come to a conclusion that the activity of storage of Petroleum or Kerosene is not being carried on in the said premises. Something more realistic ought to have formed basis of such a conclusion.

For the aforesaid reasons, the Writ Petition deserves to be allowed.

Accordingly, the Writ Petition is allowed and the order passed by the first respondent in Rc.No.A10/13030/90 dated 16-06-1997 is hereby quashed, but however, without costs.

(Nooty Ramamohana Rao, J)

22nd December, 2006
LUR

[1] **1996 (2) Law Summary 325**

[2] **1991 (1) An.W.R. 533**